BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JULIA K. BLACKMON	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,007,321
YORK UPG WICHITA	)	
Respondent,	)	
Self-Insured	)	

ORDER

Claimant appealed the December 20, 2002 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

This is a claim for an October 31, 2002 accident, when claimant fell from a three-foot retaining wall on respondent's premises while on her way to work. In the December 20, 2002 Order, Judge Barnes determined claimant's accident did not arise out of and in the course of employment and, therefore, denied the request for benefits.

Claimant contends Judge Barnes erred. Citing *Teague*[1] and *Thompson*,[2] claimant argues her accident is compensable as her accident occurred after she arrived at respondent's premises and, therefore, there was a connection between her accident and the risks associated with her employment. Accordingly, claimant requests the Board to reverse the December 20, 2002 Order and find that her accident arose out of and in the course of her employment.

Conversely, in its brief to the Board, respondent argues the accident did not arise out of claimant's employment for a number of reasons, among others: (1) at the time of the accident claimant was not walking on the path previously designated by respondent, (2) claimant disobeyed respondent's instructions regarding where to walk, (3) there is no causal connection between the accident and claimant's work duties, (4) claimant's accident

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[1] *Teague v. Boeing Airplane Co.*, 181 Kan. 434, 312 P.2d 220 (1957).

[2] *Thompson v. Law Offices of Alan Joseph*, 256 Kan. 36, 883 P.2d 768 (1994).

occurred as the result of a personal risk that was not associated with, or increased by, her employment, (5) respondent should not be liable for this accident unless it had knowledge that claimant was not following a prescribed path, and (6) taking the path that claimant took constituted a deviation from her employment. Accordingly, respondent requests the Board to affirm the December 20, 2002 Order.

The only issue before the Board on this appeal is whether claimant's accident arose out of her employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

Claimant injured her left leg on October 31, 2002, when she fell from a three-foot retaining wall. The accident occurred on respondent's premises while claimant was on her way to work. At the time of the accident, claimant was walking from respondent's parking lot to the break room, which was shorter than entering the factory at the north entrance and walking back to the designated break area. For approximately three months before the accident, claimant had reported to work following the same path that she followed on the date of accident and which she had observed others use on a regular basis.

In January 2002, respondent circulated a memorandum in which the respondent directed how employees were to use a new parking lot and the path they should follow into their respective buildings.

But claimant testified she believed the instructions in that memorandum, and the instructions given at two later meetings, pertained to workers coming into work who were going to clock in. Claimant also testified that no one ever told her that she could not walk along the retaining wall to get to the break area and that she reportedly saw other employees take that path to the break area.

The January 2002 memo that prescribed the route from the new parking lot into the plant states:

> **SUBJECT: Parking Lot Opening**
>
> The new parking lot East of the new building will be opening on Monday. **In order to maximize the efficiency of the facility, it is important that employees park/walk as outlined below:**
>
> - Hourly employees shall park in new parking lot.

- Hourly employees will also be permitted to park in caged lot North of the new building until further construction begins.
- Parking on West side of AME will be for salaried, handicapped and AME employees only.
- Source One employees may continue to park as they have been.
- No parking will be permitted along the North and South curbs on the North side of the new building.
- The parking lot South of steel receiving will be closed beginning Monday.
- Pedestrians leaving the new parking lot shall walk along the North side of the new building and proceed into the third door down on the North side (toward the mid-point of the new building).
- SEE MAP PROVIDED ON BACK OF THIS MEMO FOR WALKING INSTRUCTIONS.

We appreciate your cooperation in making this transition as comfortable as possible. **The addition of the new parking lot will prevent some of the congestion which now occurs because of overcrowding in current parking lots, serving to decrease the likelihood of vehicle damage and increase pedestrian safety.**[3]

The memo does not prescribe how employees are to exit their respective buildings, where they are to report if they arrive to work early, or that they are prohibited from walking in the area where claimant fell.

For the reasons below, the Board finds for purposes of preliminary hearing that claimant's accident is compensable under the Workers Compensation Act. Accordingly, the Board reverses the December 20, 2002 Order and finds that claimant's October 31, 2002 accident arose out of and in the course of employment with respondent.

The Board agrees with respondent that not every accident that occurs on an employer's premises is compensable under the Act. But the accident that is the subject of this claim is compensable.

The Act is to be liberally construed to bring both employers and employees within its provisions, affording both the Act's protections. The Act is to be applied impartially to both employers and employees.[4]

But before an accidental injury is compensable under the Act, the accident must arise out of and occur in the course of employment.

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[3] P.H. Trans., Resp. Ex. 1 (emphasis added).

[4] K.S.A. 44-501(g).

> If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act. . . .[5]

The Act does not define "arising out of and in the course of employment" other than to state what shall not be construed as satisfying the definition.

> The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer. . . .[6]

The Courts have provided additional guidance and have held that an accident "arises out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Accordingly, an injury arises out of employment if it arises out of the nature, conditions, obligations, or incidents of the employment.[7] Additionally, the phrase "in the course of" employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the employee was at work in the employer's service.[8]

Moreover, the Kansas Supreme Court has held that once an employee reaches an employer's premises, the risks to the employee are causally connected to the employment. Therefore, an injury sustained on the premises may be compensable even if the employee has not yet begun work. In *Thompson*, the Court, while analyzing what risks were causally related to a worker's employment, wrote:

> The rationale for the "going and coming" rule is that while on the way to or from work the employee is subjected only to the same risks or hazards as those to

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[5] K.S.A. 44-501(a).

[6] K.S.A. 2002 Supp. 44-508(f).

[7] *Newman v. Bennett*, 212 Kan. 562, Syl. ¶ 1, 512 P.2d 497 (1973).

[8] *Id.* at Syl. ¶ 1.

> which the general public is subjected. Thus, those risks are not causally related to the employment. . . . However, **once the employee reaches the premises of the employer, the risks to which the employee is subjected have a causal connection to the employment, and an injury sustained on the premises is compensable even if the employee has not yet begun work**. . . .[9]

Kansas law has long held that accidents occurring on an employer's premises while an employee is walking into work may arise out of and in the course of employment.[10] In *Teague*, the Kansas Supreme Court determined that it was "quite clear" that an employee's slip and fall on ice while walking into work and the resulting injuries were incidental to the employment and compensable under the Workers Compensation Act. And in *Chapman*,[11] the Kansas Supreme Court stated, "[i]f the employee is injured on the way to or from work while on the employer's premises or on a special hazard route, the employee is eligible for coverage [under the Act]."

Respondent argues claimant deviated from her employment when she walked in an area other than that previously prescribed in the January 2002 memorandum. It also argues, in essence, that claimant's accident did not arise out of her employment because she was allegedly forbidden from walking in the area where she fell. In effect, respondent argues that claimant should be denied benefits because she allegedly violated safety policies.

Claimant's accident occurred on respondent's premises while she was on the way to assume work. The fact that claimant was early and intended to wait several minutes in the designated break area does not constitute a deviation from being on her way to assume her duties. The Workers Compensation Act does not have a statutory provision that makes violating a safety policy or engaging in a prohibited activity an affirmative defense. Accordingly, those cases are analyzed by determining whether the alleged wrongful behavior so deviates from the employee's duties as to constitute an abandonment of the employer's business.[12] The principles set forth in cases regarding the failure to use safeguards or safety devices are also pertinent.

In order to deny benefits for failing to use a safety guard or for performing prohibited activity, Kansas law also requires that such activity be done willfully with a headstrong or

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[9] *Thompson*, 256 Kan. at 46 (emphasis added).

[10] *Teague*, 181 Kan. 434.

[11] *Chapman v. Beech Aircraft Corp.,* 258 Kan. 653, 655, 907 P.2d 828 (1995).

[12] See *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 899 P.2d 1058 (1995).

stubborn disposition. The burden placed upon an employer by the Kansas Supreme Court with respect to this defense is substantial. As used in this context, the Kansas Supreme Court in *Bersch*[13] and the Kansas Court of Appeals in *Carter*[14] defined "willful" to necessarily include:

> the element of intractableness, the headstrong disposition to act by the rule of contradiction. . . . 'Governed by will without yielding to reason; obstinate; perverse; stubborn; as, a willful man or horse.'[15]

Finally, in order to deny benefits for failing to use a safety guard or for failing to obey a safety policy, there must be a relationship between the accident and the prohibited activity. As stated in the January 2002 memo, its purpose was to direct pedestrian traffic in the new parking lot to "maximize the efficiency of the facility" and "to decrease the likelihood of vehicle damage and increase pedestrian safety." But there is no relationship between claimant's accident and respondent's concern about parking lot safety.

Under these facts, the Board concludes that the evidence fails to establish that claimant was prohibited from walking in the area where she fell. The January 2002 memo only directed workers to walk a prescribed path from the newly constructed parking lot into their assigned buildings. The memo did not address where workers were to walk when leaving at the end of the workday or during the workday. The Board concludes the purpose of the memo was to alleviate congestion in the newly constructed parking lot and to designate which doors the employees were to use in entering their respective buildings, which are purposes unrelated to claimant's accident. The memorandum did not prohibit claimant from walking in the area where she fell.

Claimant's belief that the January 2002 memo only related to the path workers were to take when they clocked in was reasonable. Accordingly, the facts neither establish that claimant was engaged in prohibited activity at the time of the accident nor that claimant stubbornly and willfully violated a safety policy.

In the claim at hand, the Board concludes claimant's accident arose out of and in the course of employment with respondent. At the time of the accident, claimant was going into work and fell from a retaining wall when she lost her balance. Accordingly, the Board concludes claimant's accident arose out of the nature, conditions, and incidents of employment. Considering the time, place, and circumstances surrounding the accident,

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[13] *Bersch v. Morris & Co.*, 106 Kan. 800, 189 Pac. 934 (1920).

[14] *Carter v. Koch Engineering*, 12 Kan. App. 2d 74, 735 P.2d 247, *rev. denied* 241 Kan. 838 (1987).

[15] *Carter*, 12 Kan. App. 2d at 85 (reference and citation omitted).

the Board concludes that the accident occurred in the course of claimant's employment.

In short, claimant was injured while on respondent's premises while reporting to work. Although claimant may not have been wise taking the path that she selected, that lapse of judgment does not prevent her from receiving benefits under the Workers Compensation Act. Therefore, claimant is entitled to receive workers compensation benefits for the October 31, 2002 accident and any related and direct consequences.

WHEREFORE, the Board reverses the December 20, 2002 Order and concludes that claimant's October 31, 2002 accident arose out of and in the course of employment with respondent. The Board remands this claim to the Judge to address claimant's request for benefits in a manner consistent with this opinion.

IT IS SO ORDERED.

Dated this ____ day of February 2003.

BOARD MEMBER

c: Bruce L. Stewart, Attorney for Claimant
Gary K. Albin, Attorney for Respondent
Nelsonna Potts Barnes, Administrative Law Judge
Director, Division of Workers Compensation